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Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Simplification of the
Depreciation Prescription
Process

TO: The Commission

CC Docket No. 92-296

OPPOSITION OF THE CALIFORNIA CABLE TELEVISION ASSOCIATION
TO PETITIONS FOR RECONSIDERATION

The California Cable Television Association ("CCTA") hereby submits its opposition to petitions for reconsideration filed in response to the Commission's Depreciation Order^{1/} adopting a modified Basic Factor Range approach in the above-captioned proceeding. CCTA filed comments in this proceeding urging the Commission to reject radical restructuring of the depreciation prescription process, and providing data that both demonstrated large variations between the LECs in a broad range of accounts and undercut the LEC argument that rapid depreciation was necessary to promote telecommunications infrastructure development.^{2/}

^{1/} In the Matter of Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, FCC 93-452 (rel. Oct. 20, 1993) ("Depreciation Order").

^{2/} Comments of the California Cable Television Association, CC Docket No. 92-296 (filed March 10, 1993).

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INTRODUCTION AND SUMMARY

CCTA urges the Commission to deny petitions filed by the United States Telephone Association (USTA) and the local exchange carriers (LECs) requesting that the Commission adopt the Price Cap Carrier Option for price cap LECs. Essentially, these petitioners seek the option that would vitiate the Commission's reasonable oversight and allow them the greatest amount of flexibility and thereby the greatest opportunity to undermine the sharing component of the Commission's price cap plan. The petitioners have not documented any legal error or provided any new materials to support their request. They simply reiterate their arguments in the underlying proceeding, which the Commission has already considered and rejected.

The Commission should also reject requests that it modify and thereby relax the standards set in the Base Factor Range option. CCTA's comments and incorporated expert study filed in the first phase of this proceeding demonstrated up to 2,000 percent variations between LECs for the same account, and huge average variances between accounts. These showings justified the Commission not changing the then existing depreciation procedures for what amounted to 25 percent of the LECs' annual operating expense.

When the Commission chose the current Basic Factor Range option, it modified it from its original proposal to take the petitioners' concerns into consideration. Any further modification would be premature. Given the enormous impact

depreciation has on each telephone company and its ratepayers, implementation of this new methodology should be in phased stages. Any further changes in the depreciation prescription process should be undertaken only after very careful study of the steps the FCC has already determined to take.

I. The Commission Should Deny Requests That It Adopt The Price Cap Carrier Option For Price Cap Local Exchange Carriers.

USTA and several LECs petition the Commission to reconsider its Depreciation Order and adopt the Price Cap Carrier option, which they argue the FCC wrongly rejected.^{3/} The LECs' preferred option is the one that does not require any supporting data and cedes this Commission's statutory responsibility and obligation to prescribe depreciation of each class of property entirely to the LECs.

The Basic Factor Range option, of the four options, is the only option that still retains a degree of FCC oversight over the depreciation prescription process. As opposed to the Price Cap Carrier option, which does not require any underlying data, the Basic Factor Range option at least requires streamlined data. In addition, the Price Cap Carrier option, as the Commission correctly observed, could create incentives for the LECs to

^{3/} See e.g., Petition for Reconsideration of the United States Telephone Association, CC Docket No. 92-296, at 2-7 ["USTA Petition"]; Petition for Reconsideration of Pacific Bell and Nevada Bell, CC Docket No. 92-296, at 4-8 ["Pacific Bell Petition"]; Petition for Reconsideration of the Ameritech Operating Companies, CC Docket No. 92-296, at 4-8 ["Ameritech Petition"].

reflect uneconomic levels of depreciation expense in lieu of having to share their earnings with ratepayers.

Recognizing that depreciation expense is the LECs' single largest expense, averaging about 25 percent of annual operating expense, the Commission refused to adopt an option that affords such opportunity and incentive for carriers to "undermine a vital component of the LEC price cap plan at this time."^{4/} Contrary to the claims of the petitioners, the Commission has considered and properly rejected the considerations raised in their petitions.

A. The Commission's Conclusions On The Level Of Competition In The Local Exchange Marketplace Are Supported By The Record.

Several petitioners argue that the Commission should reconsider its conclusion that the level of competition in the local exchange marketplace does not justify a more relaxed depreciation standard, particularly in light of the recent mergers and acquisitions between cable companies and telephone companies.^{5/} Although petitioners argue that marketplace changes have occurred since the Commission issued its NPRM and Depreciation Order, they are not sufficient to justify reconsideration.^{6/} Each of the market events cited by the

^{4/} Depreciation Order, at ¶ 43.

^{5/} See e.g., Petition for Reconsideration of U S West, Inc., CC Docket No. 92-296, at 3-4 ["U S West Petition"]; Petition for Reconsideration of The Southern New England Telephone Company, CC Docket No. 92-296, at 3-4.

^{6/} 47 C.F.R. § 1.106.

parties occurred during the pendency of this proceeding. The Commission was well aware of the industry's proposed mergers and acquisitions. In fact, the Commission explicitly recognized that the LECs "are operating in a rapidly changing environment" and "now face emerging competition in their current markets, which is likely to increase."^{7/} Moreover, these events cited by the LECs reflect only the potential for future competition. The LECs, particularly in California, hold control over in the upper 90th percentile of all of their core markets.

Contrary to the views of some petitioners, the Commission's distinction between AT&T and the LECs is not groundless.^{8/} The Commission expressly stated that because of its regulatory model and the very significant competitive forces it faces, AT&T would be subject to the price cap option.^{9/} The Commission also noted that unlike the LECs, AT&T's price cap plan does not include a sharing obligation component.

The Commission, moreover, as urged by CCTA in its comments, clearly rejected the LECs' attempt to create a nexus between increased depreciation expense and increased investment in the telecommunications infrastructure. Depreciation expense and infrastructure investment are two distinct policies. Not only did the Commission conclude that adoption of the Price Cap

^{7/} Depreciation Order at ¶ 55.

^{8/} Ameritech Petition at 8-9; Comments of BellSouth Telecommunications, Inc., CC Docket No. 92-296, at 8-9.

^{9/} Depreciation Order at ¶ 19.

of plant to ensure improved network functionality and service quality."^{14/} The Commission thus stated that it would institute a further proceeding aimed specifically at exploring ways in which the depreciation process can be "responsive to actual changes in patterns of LEC investment and plant retirement" and reward "those companies that rapidly modernize their infrastructure to meet market and technological demand."^{15/} It is in that proceeding that petitioners should make their claims.^{16/}

B. The Price Cap Carrier Option Does Not Afford Sufficient Regulatory Oversight To Prevent Carriers From Using Depreciation To Manage Earnings.

Petitioners' argument that the Price Cap Carrier option affords as much regulatory oversight as the Basic Factors Range option is patently false.^{17/} If it did, the LECs would not have filed these petitions. Under the Price Cap Carrier option, carriers would have absolute flexibility and control over depreciation. Indeed, the Commission explicitly stated that "[u]nlike the basic factors range approach, this [Price Cap

^{14/} Depreciation Order at ¶ 56.

^{15/} Id.

^{16/} See also Simplification of the Depreciation Prescription Process, Order Inviting Comments, FCC 93-492 (rel. Nov. 12, 1993).

^{17/} See e.g., USTA Petition at 3-4.

Carrier option would not encourage investment in the telecommunications infrastructure, but also that increased depreciation rates do not lead to increased infrastructure development.^{10/} In addition, there is no rule requiring that any revenue resulting from increases in depreciation expense actually be invested in the infrastructure.^{11/}

Finally, the Commission was unpersuaded by petitioners' underlying arguments that the Price Cap Carrier option was necessary for them to compete in the interexchange access market.^{12/} USTA and the LECs again attempt to emphasize the changing marketplace that they face and their need to be able to compete on a level playing field.^{13/} They do not, however, present any justification for requiring others to bear the costs of their entry into competitive markets. It will be the LEC shareholders who will be the ones to benefit potentially from competitive revenues available from new technologies, and they should therefore be the ones to bear the risks and the costs of funding such modernization.

The Commission anticipated, however, that in some specific cases the "increase in competition and the rapid changes in technology and services may lead LECs to request an acceleration of their depreciation to reflect an increase in their replacement

^{10/} Depreciation Order at ¶ 52.

^{11/} Id.

^{12/} Id. at ¶ 54.

^{13/} See e.g., U S West Petition at 3-4; USTA Petition at 6.

Carrier] option will not provide us with sufficient information."^{18/}

Price cap carriers cannot be given "carte blanche" in depreciation. The amount of depreciation expense will have a direct effect on a telephone company's net earnings and thus its ability to share with ratepayers. In addition to the impact on shareable earnings, improper depreciation quantification can lead to unreliable operating results, which in turn could mislead regulators, the financial community and other interested parties. Unsupported filings would not provide the necessary regulatory oversight mandated by Section 220(b) of the Communications Act to prevent these abuses.

C. The Commission Has Already Considered And Rejected The Petitioners' Proposed Safeguards.

Several petitioners argue that the Commission analyzed and rejected their proposed safeguards on an individual basis as opposed to considering them operating together as whole.^{19/} The Commission did find that none of the safeguards individually minimized the carriers' opportunity and incentive to sharing, but it also reasoned that to impose all of the safeguards would "produce a process more burdensome than the basic factor range

^{18/} Depreciation Order, at ¶ 43.

^{19/} See e.g., USTA Petition at 6; Pacific Bell Petition at 6; Petition for Reconsideration of GTE, CC Docket No. 92-296, at 3.

option with less ratepayer protection".^{20/} If all of those safeguards are necessary, moreover, then the Price Cap Carrier option obviously does not afford the same regulatory oversight as the Basic Factor Range option, as the petitioners claim.

II. The Commission Should Reject Attempts By The Local Exchange Carriers To Expand The Ranges And Thereby Reduce The Effectiveness Of Regulatory Oversight Of Depreciation Rates.

USTA, supported by the LECs, seeks modification of the Commission's already modified Basic Factor Range option. The Commission has already modified its proposed simplification option in recognition that its original proposal may have been too rigid.^{21/}

As proposed in the NPRM, the Basic Factor Range option involved calculating ranges using industry-wide data to produce basic factors, representing thirty-three LECs, then allowing a range of one standard deviation below and one standard deviation above the average. Traditionally, basic factors are evaluated on an individual company basis. An averaging methodology is not likely to capture, or accurately reflect, the sizeable variance among all of the thirty-three LECs. CCTA's comments pointed out variances of as much as 2,000 percent in some LEC accounts. Thus the LECs are naturally going to seek to expand the ranges to allow more flexibility.

^{20/} Depreciation Order at ¶ 48.

^{21/} Depreciation Order at ¶ 62.

The Commission has already contemplated these arguments, but reasoned that it "will start with ranges of one standard deviation around an industry-wide mean of basic factors underlying currently prescribed rates" and then it will "consider other factors such as the number of carriers with basic factors that fall within this initial range and future LEC plans in determining the actual range width for any one account."^{22/} The Commission has reasonably anticipated that it may learn more from initial implementation, and has allowed for later changes. Reconsideration at this time is premature.

In light of the fact that depreciation expense represents such a large portion of LEC expenses, the need for high levels of study and analysis are obvious. In dealing with an averaging methodology, detailed analyses and ample document support are necessary to achieve important public interest objectives. Accurate quantification in development of depreciation rates should not be sacrificed for the sake of LEC expediency.

The LECs have ample flexibility within the proposed ranges, which will be further expanded and modified as the Commission continues to implement this option. Replacing the current methodology with an "averaging" one is a process that the

^{22/} Id.

Commission should undertake with caution, due to the large impact that depreciation expense has on each affected telephone company, and ultimately on the telephone ratepayer.

Respectfully Submitted,

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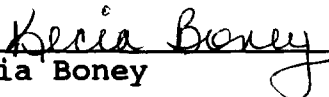
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January 24, 1994

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CERTIFICATE OF SERVICE

I, Kecia Boney, do hereby certify that a copy of the foregoing Opposition of The California Cable Television Association to Petitions for Reconsideration was served on the following by either hand delivery or first class mail, postage pre-paid, this 24th day of January, 1994.


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